

PDC Interpretation

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SEE ALSO: Servicemembers Civil Relief Act (SCRA), 50 USC App. Secs. 501-593
Chapter 42.17 RCW
Title 390 WAC

Servicemembers Civil Relief Act and PDC Filings

Background:

The Servicemembers Civil Relief Act (SCRA) is a longstanding federal law (first passed as the Soldiers and Sailors Civil Relief Act during World War I) protects members of the armed forces from various legal obligations while engaged in active duty. The old statute was recently amended, renamed the Servicemembers Civil Relief Act (SCRA) and signed into law on December 19, 2003. The current statute appears at 50 United States Code Appendix Sections 501-593. A complete copy of the statute can be found on the Washington State Courts website as well at <http://www.courts.wa.gov/newsinfo/ssra/>. The SCRA is designed to protect active duty military members and active reservists and active National Guard members. The SCRA applies to states and political subdivisions.

The SCRA does not explicitly address a servicemember's obligation to file with the Washington State Public Disclosure Commission. But the SCRA does allow a qualifying servicemember relief from "any obligation or liability" incurred during a period of active duty.

While this appears to apply primarily to tax and other similar financial obligations, the PDC has determined an analogy can be made to the obligation to file required paperwork with the PDC, particularly as they may relate to or result in financial penalties, liabilities and consequences that result from late or missed filings. Using the SCRA as a basis for considering late PDC filings by qualifying service members is within the SCRA's applicability "to any judicial proceeding commenced in any court or agency in any jurisdiction subject to this Act." 50 USC App. Sec. 512. Additionally, Congress has declared the SCRA is to be interpreted very liberally.

The SCRA also allows qualifying servicemembers to obtain a stay from a court of any legal proceedings against them and to reopen a default judgment entered against them if the servicemember failed to respond to a lawsuit while on active duty.

SCRA Criteria:

1. Active Duty.

The SCRA applies to servicemembers on “active duty.” Active duty is defined as full-time duty in the active military service of the United States, including full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. 10 USC Sec. 101(d)(1). Active status includes active members of reserve components including active Army or Air National Guard members. Active reservist means full time duty in the reserve components or in the National Guard. 10 USC Sec. 101(d)(3)-(5). Service of less than 30 days is not “active service.” 10 USC Sec. 101(d)(2). Protections under the SCRA for active reserve and Guard members begin on the date of receipt of the order for military service. 50 USC App. Sec. 516.

2. Materially Affected.

Under the SCRA if a qualified active servicemember is “materially affected” by reason of military service from complying with a court judgment or order, the court may on its own motion or shall on application of a servicemember stay the execution of any judgment or order entered against the servicemember before or during the service period and/or within 90 days of termination of the service. 50 USC App. Sec. 524. The definition of “court” in the SCRA consistently includes administrative agencies. Qualifying service under the SCRA also tolls a statute of limitation and the service period “shall not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department or other agency of a state” 50 USC App. Sec. 526.

If the servicemember’s ability to satisfy an obligation is “materially affected” by the military service, a court can grant various types of relief such as staying the obligation during the period of service and beyond. During the stay period no fines or penalties connected with the obligation are to accrue. 50 USC App. Sec. 591. In all instances the burden is on the servicemember to show qualifying service and to show that the service materially affects the servicemember’s ability to appear or otherwise satisfy the particular obligation. There is no definition in the SCRA of the term “materially affected.” Thus, it will be determined on a case-by-case basis.

PDC Policy/Interpretation:

If a member of the active military seeks relief from PDC filing deadlines occurring during active duty, or penalties imposed during active duty, the service member (or an attorney or other authorized representative) must establish the following:

- That he or she was on “**active duty**” for the time in question.
- That the qualifying service “**materially affects or materially affected**” the ability to timely complete the filing or to have appeared before the PDC in a timely manner to request a modification or other relief.
- That he or she has **specified the relief requested** – such as an extension of time to file the report, waiver of penalties associated with late or missed filing, or that they have obtained from a court a stay of reporting requirements or other relief as desired.
- That he or she has specified the **time period for the relief sought** – at least during the period of service and may include through 90 days from termination of service, and in the case of reservists, starting from the date of receipt of orders.
- That he or she has **timely sought relief**. The SCRA generally allows application for relief during the period of service and up to 180 days beyond.